IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

WP(C).No. 6751 of 2007(D)

PETITIONER:

M.VENUGOPALAN, AGED 49 YEARS,
S/O.NARAYANAN NAMBIAR, HEADMASTER, KURUVA U.P.
SCHOOL, P.O.KADALAI, KANNUR DISTRICT.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC ISTRUCTION, JAGATHY, TRIVANDRUM-14.

3. THE ASSISTANT EDUCATIONAL OFFICER, KANNUR NORTH, P.O.KANNUR.

BY GOVERNMENT PLEADER (SHRI A. J. VARGHESE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 6751 OF 2007 D

Dated this the 9th March, 2007

JUDGMENT

Petitioner has approached this Court on the following brief allegations:

Petitioner is the Headmaster of Kuruva U.P. School. There were twelve posts of teachers sanctioned by the AEO based on the strength verified by the competent authority on 29.6.2005. The The Super Check Cell visited the School on 30.11.2005. One post in Standard II was reduced on the ground that out of 52 pupils in Standard II as on 29.6.2005, eight pupils were retained bogus. One post of LPSA was abolished. Ext.P1 is a strength verification. Ext.P2 is a staff fixation. That was issued on 14.7.2005. Further case of petitioner is that the Director of Public Instruction ordered the AEO that the students studying in Standard II are found genuine, and the effective strength mentioned is 46 in Standard II and hence the effective strength justified the sanction of the post under 1:40 ratio. The DPI, it is

stated, also ordered that the AEO should examine the eligibility of retention of teachers at 1: 40 ratio in the academic year 2005 - 2006. It is further stated that instead of implementing the order of the DPI, the AEO directed the petitioner to remit the amount paid to the teacher, Smt. P. Jayalakshmi, and chalan receipt to be produced. Petitioner's pay is withheld by the AEO. It is stated that against this, petitioner moved the Government by Ext.P4 Revision Petition.

2. This Court directed the petitioner to produce the order of the DPI. The order of the DPI is produced as Ext.P5. A perusal of Ext.P5 would show that the DPI has ordered, inter alia, that due to irregular fixation of staff, the State Exchequer has incurred additional and unnecessary expenditure by allowing pay and allowance to one teacher, and that the loss sustained by the Government will be recovered from the Headmaster of the School, who alone is responsible for the same. In fact, petitioner has not referred to this aspect in the Writ Petition. Whatever that be, apparently Ext.P3 is issued on

the basis of Ext.P5. Petitioner, though has referred to Ext.P5 in Ext.P4, on a perusal of the prayer in Ext.P4, it would be clear that the petitioner seeks to set aside Ext.P3. Ext.P3 is an order passed by the AEO. A Revision under Chapter XXIII KER is maintainable before the Government only against an order passed by the DPI. I am unable to accept the case that merely because Ext.P5 is referred to in Ext.P4, it should be taken that the order challenged is the said order. In fact, it is very clear that the order challenged in Ext.P4 is the order passed by the AEO, namely Ext.P3. It is clear that Ext.P4 is not maintainable. If at all, the remedy of petitioner lies in preferring a Revision Petition against Ext.P5 order. In such circumstances, the Writ Petition is disposed of directing that if the petitioner prefers a Revision Petition against Ext.P5 order of the DPI, the first respondent will consider and pass appropriate orders thereon in accordance with law, after hearing the affected parties. If the petitioner moves any application for interim relief therein, appropriate orders will be passed by first respondent within five

days from the date of receipt of such application. I leave open the contentions of petitioner.

K. M. JOSEPH, JUDGE

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